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4 IN THE UNITED STATES DISTRICT COURT

5 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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7 BERKELEY UNIFIED SCHOOL
DISTRICT,

8 Plaintiff,

9 v.

10 A.B.T.,

11 Defendant.

Case No. 18-cv-06968-MMC

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

Re: Dkt. No. 36

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13 Before the Court is plaintiff Berkeley Unified School District's ("the District") motion
14 for a preliminary injunction, filed July 5, 2019. Defendant A.B.T. has filed opposition, to
15 which the District has replied. The matter came on regularly for hearing on August 16,
16 2019. David R. Mishook and J. Sterling Elmore of Fagen, Friedman & Fulfrost, LLP
17 appeared on behalf of the District. Natashe Washington of Miller & Washington LLP
18 appeared on behalf of A.B.T. Having read and considered the parties' respective written
19 submissions and the administrative record, and having considered the arguments of
20 counsel made at the hearing, the Court, for the reasons stated at the hearing, rules as
21 follows.

22 On September 13, 2018, an administrative law judge ("ALJ") found the District
23 violated the Individuals With Disabilities Education Act ("IDEA"), and, as relief, ordered
24 the District to pay for and provide certain training to its employees and, in addition, to
25 reimburse A.B.T. for the costs her mother expended in placing A.B.T. in a therapeutic
26 boarding school and for related services. (See Compl. Ex. A at 26-28.)

27 By the instant action, the District seeks a finding that it did not violate the IDEA
28 and that the above-referenced decision (hereinafter, "Decision") be vacated in its entirety.

1 See 20 U.S.C. § 1415(i)(2)(A) (providing "any party aggrieved by the findings and
2 decision made [by an ALJ] shall have the right to bring a civil action"). By the instant
3 motion, the District seeks an order staying enforcement of the Decision, pending
4 resolution of the above-titled action.

5 "A plaintiff seeking a preliminary injunction must establish that [it] is likely to
6 succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of
7 preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in
8 the public interest." Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).
9 Alternatively, under the "sliding scale test," a preliminary injunction is appropriate where
10 the plaintiff, in addition to establishing a likelihood it will suffer irreparable harm and that
11 the injunction is in the public interest, establishes that "serious questions going to the
12 merits" exist and that "the balance of hardships tips sharply in the plaintiff's favor."
13 Alliance for the Wild Rockies v. Cottrell, 632 F.3d 1127, 1134-35 (9th Cir. 2011). The
14 Court next considers the above-referenced factors.

15 First, although the Court is not prepared at this time to find the District is likely to
16 succeed on the merits, the Court does find there exist serious questions going to the
17 merits. In particular, serious questions have been raised as to whether a lack of
18 cooperation on the part of A.B.T.'s mother during A.B.T.'s junior year effectively
19 constituted a withdrawal of her consent to have A.B.T. evaluated for eligibility for special
20 education, and, if so, whether such withdrawal excused the District from conducting such
21 an evaluation. See 34 C.F.R. § 300.300(a)(3) (providing district does not violate its
22 obligations to evaluate child where parent "does not provide consent" to evaluation).

23 Next, the Court finds the District, in the absence of a stay, is likely to suffer
24 irreparable harm. In that regard, the California Department of Education ("CDE") has
25 notified the District that, if it does not comply forthwith with the Decision, i.e., if the District
26 does not immediately pay for and provide the staff training, as well as reimburse A.B.T.
27 for the expenses incurred by her mother, the District faces losing its special education
28 funding. (See Elmore Decl. Ex. E.) If, on the other hand, the District provides the staff

1 training and reimburses A.B.T. before the instant action is resolved, the District, were it to
2 prevail, would lack any meaningful way to recoup those funds, see Tamalpais Union High
3 School Dist. v. D.W., 2016 WL 5791259, at *11 (N.D. Cal. October 4, 2016) (holding
4 district established likelihood of irreparable injury where CDE "demand[ed]" district
5 comply with ALJ's order directing district to reimburse parents for cost of private school,
6 as it was "unlikely" district "would have any right to recoupment" if district court were to
7 find ALJ's decision was erroneous), thus, in essence, rendering illusory its statutory right
8 to have the Decision reviewed.

9 For similar reasons, the Court finds a stay is in the public interest. The District
10 oversees the education of many children, including hundreds of disabled students at
11 Berkeley High School alone (see Administrative Record at 672:4-10), and any loss of
12 funding would negatively affect the numerous students who require special education
13 services. See Tamalpais, 2016 WL 5791259, at *12 (finding stay of ALJ's decision
14 requiring parents be reimbursed for cost of private education was in public interest where,
15 in absence of stay, district risked loss of funding from CDE).

16 Lastly, with respect to the balance of hardships, although A.B.T.'s mother has
17 described undergoing difficult financial circumstances,¹ the Court finds, given the
18 District's potential loss of funding necessary to provide special education services to a
19 substantial number of students, the balance in this instances tips sufficiently in the
20 District's favor.

21 Accordingly, the District's motion will be granted.

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28 ¹No argument has been made that A.B.T. herself would incur any hardship.

CONCLUSION

For the reasons stated above, the District's motion for a preliminary injunction is hereby GRANTED, and, accordingly, the Decision, issued September 13, 2018, by the California Office of Administrative Hearings in OAH Case No. 2018030517, is hereby STAYED pending resolution of the above-titled action.

IT IS SO ORDERED.

Dated: August 21, 2019

Maxine M. Chesney
MAXINE M. CHESNEY
United States District Judge